United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-1098

To be argued by
IRVING ANOLIK

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

IRVING BEHRMAN,

Defendant-Appellant.

Appeal from Judgment of United States District Court for the Southern District of New York

BRIEF FOR DEFENDANT-APPELLANT

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UNITED STATES OF AMERICA,

Appellee,

-against-

IRVING BEHRMAN,

Defendant-Appellant.

- - - - - - - - - - - - - - - - - - - -x

DEFENDANT-APPELLANT'S BRIEF

STATEMENT

Defendant-appellant, Irving Behrman, appeals from a judgment of the United States District Court for the Southern District of New York, rendered the 23rd day of February, 1976, convicting him of two counts of filing false tax returns for the years 1968 and 1969, in violation of 26 U.S.C. §7206(1), after trial before Honorable Lee P. Gagliardi, D.J., and a jury.

The Court sentenced the defendant to 6 months imprisonment and a $2500 fine on each count, concurrently, to be followed by a period of 3 years probation.

INTRODUCTORY

We submit that the case at bar is quite singular in that there is insufficient evidence to have warranted any submission to the jury.

The defendant had been investigated for a very long period of time by the Internal Revenue Service. The taxable years involved in the case at bar were 1968 and 1969. Virtually on the eve of the expiration of the statute of limitations, the Government brought this prosecution.

After all of the investigating, the Government has not charged the defendant-appellant with evasion of taxation, but rather with filing false tax returns. The falsity of the returns, however, were not established at all.

At page 306 of the trial record the Court commented:

> "THE COURT: I have a great deal of difficulty with this case."

At page 326 of the record the Court, after a colloquy with Government counsel, declared:

> " HE COURT: I hope not. It is a difficult enough case. Let's not put in something additionally. i have a great deal of reservation about it. You are aware of that. Maybe we will see what the jury does and one way or the other I will have to resolve it."

At 326 the Court further indicated that the Government could have brought in some expert testimony, but did not.

We refer to the foregoing commentaries to point up that even the Trial Court was very disturbed by the gossamer fabric from which the Government's case was woven.

Primarily the Government's case was predicated upon the fact that the defendant signed the name "Harold Roth" to a number of checks which were received from two sources, namely Curtis Wagner, President of Wagner-Nelson Company in Texas, and Charles Gilman.

The Government sought to establish, through testimony, that these checks were then deposited in an account in the Bank of Tokyo in New York in the name of "Harold Roth" and later withdrawn in cash. The issue as to whether or not the defendant signed the name "Harold Roth" is not before this Court since it is conceded. It is not, however, conceded that any of the funds received in this manner constituted income or even represented funds received as a result of goods sold and delivered.

The Government failed to introduce a single invoice to show that the transactions involved anything related to goods sold and delivered. The check stubs of Wagner-Nelson in some

instances had the word "foliage" imprinted or penned in. From this the Government sought to extrapolate that perhaps the checks were in payment for the foliage. The amount of foliage, the other aspects that would be contained in an invoice, were totally lacking.

Gilman, however, testified that the defendant and he had loaned money to each other on a number of occasions and a good deal of money flowed back and forth representing loans and repayments thereof, and much of it had nothing whatsoever to do with business at all. It is true that he did say that he had purchased some material from the defendant at a very good price but he made it quite clear that substantial amounts of money were loaned by him to "Roth" and that moneys were paid back which represented loans rather than the cost of goods sold.

It is significant to note that the indictment in both counts charged the defendant, inter alia, that Behrman's "adjusted gross income" did not include substantial amounts received by him during the particular year involved from customers who purchased merchandise from him.

There was absolutely no evidence whatsoever as to what his income was, let alone his "adjusted" gross income. In short, there is no evidence at all of adjusted gross income.

The Court should not have permitted this case to go to the jury.

THE EVIDENCE

Herbert Kraus, a certified public accountant called by the prosecution, testified that he had prepared an income tax return for the defendant. He conceded, however, that he had not been Behrman's regular accountant and that he was only interested in taxable income (37-45).* **

Curtis Wagner, who was President of Wagner-Nelson Company, testified that he had purchased some plastic flowers and foliage from Behrman, who he believed was employed by United Flowers Corporation (47, 48).

Wagner declared that Behrman never told him who Harold Roth was, although he did make out some checks in that name at the defendant's request (49).

The witness was unable to account for a number of original checks which were significant to the case and stated that he last saw these as far back as 1970. He could not account

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* Numerals in parentheses refer to pages of the official Court Reporter's minutes of trial, unless otherwise indicated.

** Presumably loans and repayments thereof would not have taxable consequences to appellant, nor would transactions in which he was merely acting as a conduit.

for what happened to them after that. The Government was unable to explain what had happened to them either and, over objection, was permitted to introduce photostats, many of which were not very clear (59-66).

Much of the goods, Wagner recalled, was shipped from Hong Kong (82). He stated that he had never met Harold Roth and was not told by Behrman who Harold Roth really was (49, 59, 84).

Wagner stated that at no time did he ever give any kickbacks to the defendant. On another occasion he declared that he did give certain cashier's checks to Behrman.

Special Agent Robert Stone of the I.R.S. stationed in Texas, declared that he had been working on this case as far back as 1972 and he, too, was unable to account for certain original exhibits which apparently were never found.

It is significant, however, to note that not one single invoice was ever produced by the Government to establish that any goods were sold and delivered (140-145).

Charles Gilman testified that he knew the defendant and knew him to be the person using the name of Harold Roth. He stated at one point he employed the defendant since his business was not doing well (159-168).

Gilman, however, admitted that he himself had been charged with tax fraud in 1968 and that he owed the I.R.S. over $70,000.

He also stated that he had lied to the I.R.S. and had told them that Harold Roth came from Philadelphia (184-194).

Gilman admitted that he loaned a substantial amount of money to the defendant without collateral (195-198).

He also stated that he received a check from the Wagner-Nelson Company in repayment of a loan from the defendant (198-201).*

The defendant did not take the stand and called no witnesses in his defense.

ARGUMENT

POINT I

THE COURT SHOULD HAVE GRANTED THE MOTIONS TO DISMISS ON THE GROUNDS THAT THERE WAS INSUFFICIENT EVIDENCE AS A MATTER OF LAW TO SUBMIT ANYTHING TO THE JURY. AT MOST, THE GOVERNMENT ESTABLISHED THAT FUNDS WERE DEPOSITED IN AN ACCOUNT BEARING THE NAME "HAROLD ROTH" AND WERE LATER WITHDRAWN. THEY DID NOT ESTABLISH THAT THESE FUNDS WERE INCOME. THEY FAILED TO ESTABLISH THAT "HAROLD ROTH" HAD NOT FILED A TAX RETURN IN HIS OWN NAME.

The Government, in the case at bar, was obviously unprepared for trial. This case was inherited by the trial assis-

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* This indicates that at least some money from Wagner-Nelson Company was not in payment for goods sold and delivered and indeed, there were no invoices to substantiate that any money was paid for goods sold and delivered.

tant from another assistant United States Attorney and perhaps there was some lack of enthusiasm for the prosecution since it related to the years 1968 and 1969 and followed an apparently exhaustive investigation, after which time the Government was unable to establish that any money was owed by the defendant-appellant. The Government, therefore, took refuge in 7206(1) of the statute and tried to prove that a false return had been filed.

They produced no invoices whatsoever to show that any goods were sold and delivered.

The check stubs of the Wagner-Nelson Company were hardly sufficient to establish that the moneys paid to Harold Roth constituted payment for foliage. While the word "foliage" did appear in some of the check stubs, it could have been a misnomer, it could have been self-serving and, certainly, it was not binding upon the defendant. It had no independent testimonial value since Wagner-Nelson himself had none of the invoices to produce.

Presumably, through some investigatory procedures, the Government could have established a net worth or perhaps some other indicia of the earning of income. The Court itself indicated that the Government had been remiss in this respect (See page 326 of the trial record).

Substantial sums of money in the name of Harold Roth were deposited in the Bank of Tokyo and later withdrawn. The Government failed to establish what happened to this money and did not establish that this money constituted income. As a matter of fact, it did not prove that the money was not later transmitted to United Flowers Corporation, and did not disprove that the defendant himself, using the name "Harold Roth", filed a tax return in the name of Harold Roth.

We must bear in mind that the defendant is not charged with tax evasion and no net worth theory was espoused.

This Court, in United States v. Taylor, (2 Cir. 1972), 464 F.2d 240 at 242, declared:

> "It is, of course, a fundamental of the jury trial guaranteed by the Constitution that the jury acts, not at large, but under the supervision of a judge. See Capital Traction Company v. Hof, 174 U.S. 1, 13-14, 19 S.Ct. 580, 43 L.Ed. 873 (1899). Before submitting the case to the jury, the judge must determine whether the proponent has adduced evidence sufficient to warrant a verdict in his favor. Dean Wigmore considered, 9 Evidence § 2494 at 299 (3d ed. 1940), the best statement of the test to be that of Mr. Justice Brett in Bridges v. Railway Co. [1874] L.R. 7 H.L. 213, 233:
>
> [A]re there facts in evidence which if unanswered would justify men of ordinary reason and fairness in affirming the question which the Plaintiff is bound to maintain?

> It would seem at first blush--and we think also at second--that more 'facts in evidence' are needed for the judge to allow men, and now women, 'of ordinary reason and fairness' to affirm the question the proponent 'is bound to maintain' when the proponent is required to establish this not merely by a preponderance of the evidence but, as all agree to be true in a criminal case, beyond a reasonable doubt. Indeed, the latter standard has recently been held to be constitutionally required in criminal cases. In re Winship, 397 U.S. 358, 361-364, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970). We do not find a satisfying explanation in the Feinberg opinion why the judge should not place this higher burden on the prosecution in criminal proceedings before sending the case to the jury."

It must be recalled that Gilman testified that very substantial amounts of money that he paid to defendant, who was using the name "Roth" in some instances, constituted loans and was not for goods sold and delivered at all. There were several transactions back and forth in large amounts of money, that represented loans rather than business transactions for flowers or artificial flowers.

As a matter of fact, Gilman admitted that he received money from the Wagner-Nelson Company on behalf of Behrman, to repay one of Behrman's loans. Thus, even Wagner-Nelson apparently paid money to "Roth", who in turn transferred it to the Gilman Company in repayment of a loan of Behrman's, rather than as income.

This Court, of course, is sophisticated enough to recognize that with the vast resources of the United States Government, which conducted an investigation for several years in this case, that if there were evidence of cost of goods sold or other items representing income, that it would have been introduced into evidence. Nothing of the sort was forthcoming.

The Government does not pretend to even suggest what the "gross" income of the defendant was. They cannot even establish that the moneys received by the defendant, allegedly using the name "Roth", represented income at all. If substantial amounts were repayments of loans or receipts of money from persons as loans, it would not necessarily be taxable income at all.

The Government, as we shall establish hereinafter, sought to use an inference upon an inference to shift the burden of proof to the defendant. The fact is, however, that the Government failed to even go forward to establish that money was received by the defendant as income at all. It may well be that Behrman was a conduit.

See Doyle v. Mitchell Bros., 247 U.S. 179 (1918); Stratton's Independence v. Howbert, 231 U.S. 399, 415; and Veenstra & De Haan Coal Co., 11 T.C. 964 (1948).

Gross receipts, therefore, are not necessarily gross income. A loan is not income.

However, we must bear in mind that the Government cannot be content in this particular prosecution to even establish gross income. The indictment charged the defendant with a violation with respect to his "adjusted gross income". There was no evidence whatsoever of any adjusted gross income, let alone gross income. (See Winkler v. United States, 230 F.2d 766 (1st Cir., 1956). Cf., Weather-Seal Manufacturing Co., 16 T.C. 1312, aff'd, 199 F.2d 376 (6 Cir., 1952); and Pedone v. United States, 151 F.Supp. 288 (Ct. Cl., 1957).

It is clear that there is authority both for and against the taxation of the receipts from prepaid sales of goods. The older cases, in particular, argue such proceeds are not taxable until the taxpayers' capital has been returned. However, the return of capital rationale seems to make little economic sense as applied to the income tax laws.

In any event, in the case at bar, there is no evidence that the money going into the account of this "Harold Roth" constituted money paid for goods sold and delivered. There is no evidence what capital the defendant had invested and, indeed, no attempt was made to determine this by seeking to obtain invoices from the Hong Kong sources which the Government itself

admitted had shipped the goods.

The Government, in the case at bar, established that there was a bank account and that deposits were made to it. The Government's proof cannot, however, rest upon a mere showing that such deposits were made. Further evidence must be obtained to establish that the deposits in fact reflect current income.

An expert analysis of the deposits was necessary to eliminate those items which do not reflect income, assuming there was any income at all, or which reflect income which the taxpayer did in fact report. In addition, the Government had to show that a source of current income was available to the taxpayer. (Gleckman v. United States, 80 F.2d 394, 399 (8 Cir., 1935, cert. den. 297 U.S. 709).

In the Gleckman case the Court stated that it had to be shown that the defendant had been receiving money and depositing it to his own account and checking against it for his own use.

There was no evidence at all that any withdrawals from the Harold Roth account constituted money which the defendant himself used. As a matter of fact, there was no evidence of where that money went.

We must bear in mind that this was not a net worth case since the Government did not attempt to predicate its case on

the net worth theory. (See United States v. Procario, an unreported opinion of Honorable Edmund L. Palmieri, S.D.N.Y. 1965, affirmed without deciding the point, 356 F.2d 614 (2 Cir.)).

As a matter of fact, in the Court below the defendant let it be known that if a net worth theory was being espoused, that the Government should give particulars thereof. The Government expressly abjured any conception of a net worth theory by stating that it was resting its entire case solely upon an alleged false return theory. The falsity of the return, however, could not be established without establishing that income had been received or indeed, that the money which was deposited in the Harold Roth account was for the benefit of the defendant. It could have been merely a conduit or it could have been merely a return of loans.

In Holland v. United States, 348 U.S. 121 (1954), the Supreme Court of the United States, foreseeing future difficulties, voiced a warning to the Courts below:

> "Charges should be especially clear, including, in addition to the formal instructions, a summary of the nature of the net worth method, the assumptions on which it rests, and the inferences available both for and against the accused. Appellate courts should review the cases bearing constantly in mind the difficulties that arise when circumstantial evidence as to guilt is the chief weapon of a method that in itself is only an approximation."

In United States v. O'Connor, 237 F.2d 466 (2 Cir., 1956), this Court reversed the judgment of conviction because of an improper and vague charge.

Nor did the Government establish its case on an "expenditure" method of proof. (United States v. Johnson, 319 U.S. 503 (1943); Holland v. United States, supra, id. at 126; and McFee v. United States, 206 F.2d 872, 874 (9 Cir., 1953)).

Actually, of course, the "net worth" and "expenditures" methods are very similar. (McFee v. United States, supra).

This Court is sophisticated enough to recognize that where only one theory is used there is seldom a tax fraud prosecution altogether.

After all the years of investigation in this case, the Government failed to come up with anything to establish that any money whatsoever was owed by the taxpayer or that he received any income. They found no original checks, with some exceptions, they produced no invoices whatsoever and subpoenaed no one to establish that goods were actually shipped from Hong Kong to any source.

While they established that the defendant had signed the name "Harold Roth" on a number of checks, that did not establish that this was income to him or that he was acting in any capacity other than that of an agent or that the money was

for his own use.

At the very least, the Government had to prove that a tax was due and owing for the year involved. This they did not do. They had to prove affirmative acts of wrongdoing. This they did not do. They had to establish willfullness in connection with a fraudulent tax scheme. This they failed to do as well. (Sansone v. United States, 380 U.S. 343, 354 (1965)).

Again, at this juncture we must remind the Court that the charge in the indictment was with respect to "adjusted" gross income, and not merely gross income. If the language "adjusted gross income" was used by the grand jury, we must presume that the Government intended to prove that the defendant not only had income, but that there were expenditures against that income, in order to establish adjusted gross income.

See Spies v. United States, 317 U.S. 492 (1943).

POINT II

THE GOVERNMENT, RECOGNIZING THAT IT HAD INSUFFICIENT EVIDENCE, SOUGHT TO HAVE THE COURT CHARGE THE JURY THAT THEY COULD INFER GUILT WITHOUT PROOF. THE COURT, UNFORTUNATELY, DID CHARGE THE JURY THAT THEY COULD DRAW INFERENCES OF GUILT DESPITE THE FACT THAT THERE WAS NO PROOF WHATSOEVER THAT THE DEFENDANT EVER RECEIVED INCOME, LET ALONE TAXABLE INCOME.

In Siravo v. United States, 377 F.2d 469 (1st Cir., 1967), a case upon which the Government relied very heavily, the Court did not indicate that an inference may be used to establish guilt. As a matter of fact, the Siravo Court, at 473 of 377 F.2d, declared:

> "For in a tax evasion case the government's ultimate burden is to show that the taxpayer received not only gross income but also taxable income, after deduction of capital and non-capital expenses."

At several points in its summation, the Government referred to the fact that the defendant had not produced evidence. Motions for mistrials and objections were overruled and denied (324, 370,372, 374, 381, 382).

In United States v. Bishop, 412 U.S. 346, the Supreme Court of the United States held that in any prosecution under Section 7206(1) the Government must prove willfullness and to

do that they must establish beyond a reasonable doubt that the defendant voluntarily, and intentionally violated a known legal duty and that in doing so he had an evil motive and bad faith.

The Court, at page 398, charged the jury as follows:

> "In this case the government has presented evidence that Mr. Behrman received proceeds from checks made out to him for substantial amounts of money in payment for goods sold. You the jury are permitted, but you are not required, to infer from the fact that Mr. Behrman received amounts of money that were not reported on his tax return that he had adjusted gross income that was not reported.
>
> On the other hand, I must emphasize again that the government has the burden of of proving beyond a reasonable doubt each and every element of the offense including the fact that the amount of money received by the defendant exceeded the amount of his allowable expenses. This burden remains with the government throughout the case and the defendant need not present any evidence whatsoever to establish his innocence."

The defense had objected to this instruction and preserved appropriate objections in the colloquy which preceded the charge. It was the position of the defendant that the charge was improper because of the fact that there was no evidence whasoever that any goods were in fact sold or that substantial amounts of money were in payments for goods sold. These were merely inferences which the jury had to draw from some very

sparse notations in the stubs of the Wagner-Nelson books. Gilman had admitted that much money was exchanged as loans. No invoices whatsoever were produced and no witnesses were called to establish that goods in fact were sold to Wagner-Nelson on behalf of Roth.

We do not know what happened to the money that Roth received. We do not know whether or not the money was turned over to United Flowers and we certainly have no evidence that it was income to Behrman.

In addition, the Court tells the jury that they are permitted "but you are not required to infer from the fact that Mr. Behrman received amounts of money that were not reported on his tax return that he had adjusted gross income that was not reported."

First of all, the gross income might be established, but certainly not adjusted gross income. Additionally, there is no evidence that Behrman actually received the money, but merely that this money was deposited to an account in the name of "Harold Roth" and that Behrman signed the name Harold Roth to checks. Where that money went nobody knows, because the Government failed to adduce any proof of it. There was no unusual standard of living or net worth or expenditure method

that was used to show any tax fraud or false reporting. There was no evidence that the defendant had not filed a tax return in the name of Harold Roth, or that United Flowers did not file a tax return for the money that was received.

Moreover, it was not established that this money was not merely the repayment of loans.

In any event, there was no right whatsoever on the part of the Court to tell the jury that they could infer something without the defendant having taken the stand and without proof having been adduced by the Government of the facts sought to be inferred.

It has been specifically held that the Government may not rely upon inferences to establish guilt beyond a reasonable doubt and that the burden of proof in a criminal case never shifts to a defendant.

Indeed, it has been held that the Government has the obligation of disproving a negative inference where necessary to establish guilt beyond a reasonable doubt. See Mullaney v. Wilbur, 421 U.S. 684, citing the approval In re Winship, 397 U.S. 358, 364.

At this juncture we ask the Court to recall that the Second Circuit cited In re Winship v. United States v. Taylor, supra.

In Mullaney v. Wilbur, 421 U.S. 684, decided June 9, 1975, the Supreme Court of the United States held that the requirement of the due process clause is that the prosecution must prove beyond a reasonable doubt every fact necessary to constitute the crime charged, citing In re Winship, 397 U.S. 358.

To satisfy that requirement, the prosecution in Mullaney v. Wilbur, was required to prove beyond a reasonable doubt that there were no mitigating circumstances.

In Mullaney, 421 U.S. at 702, the Supreme Court further noted:

> "Nor is the requirement of proving a negative unique in our system of criminal jurisprudence."

Unfortunately, in the case at bar, the Court permitted the jury to draw an inference, to which, of course, defense counsel objected. The Court itself had reservations about it and we submit that the instruction was incorrect.

At page 398 of the record this Court told the jury:

> "In this case the government has presented evidence that Mr. Behrman received proceeds from checks made out to him for substantial amounts of money in payment for goods sold. You the jury are permitted, but you are not required, to infer from the

> fact that Mr. Behrman received amounts of money that were not reported on his tax return that he had adjusted gross income that was not reported."

We emphasize that there was no evidence of adjusted gross income at all and, moreover, there was no evidence that no tax return was filed in the name of "Harold Roth."

However, the charge that the jury could infer anything, we submit was contrary to established law.

In Sullaney v. Wilbur, supra, the Supreme Court of the United States made it crystal-clear as follows:

> "In Winship the Court emphasized the societal interest in the reliability of jury verdicts:
>
> 'The requirement of proof beyond a reasonable doubt has [a] vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lost his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction....
>
> 'Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent

> men are being condemned.' 397 U.S., at 363, 364." (Mullaney v. Wilbur, 421 U.S. at 699, 670).

The Government herein would shift the burden of proof to some extent to the defendant to disprove that he received income. Not only that he received income, but that he did not receive taxable adjusted gross income, despite the fact that the Government never proved that he received income in the first place, and certainly never established what his adjusted gross income might have been. Thus, in Mullaney, supra the Supreme Court further declared, citing Speiser v. Randall, 357 U.S. 513, as follows [Mullaney v. Wilbur, 421 U.S. at 701]:

> "The result, in a case such as this one where the defendant is required to prove the critcal fact in dispute, is to increase further the likelihood of an erroneous murder conviction. Such a result directly contravenes the principle articulated in Speiser v. Randall, 357 U.S. 513, 525-526 (1958):
>
> '[W]here one party has at stake an interest of transcending value -- as a criminal defendant his liberty -- th[e] margin of error is reduced as to him by the process of placing on the [prosecution] the burden . . . of persuading the fact-finder at the conclusion of the trial . . . .' See also In re Winship, 397 U.S. at 370-372 (Harlan, J., concurring)."

In Mullaney v. Wilbur, the Supreme Court noted that it

may be a difficult job for the prosecutor to establish certain facts which are peculiarly within the knowledge of the defendant. In dealing with that the prosecutor is just "out of luck" since the requirements of criminal law nevertheless impose upon him the job of proving guilt beyond a reasonable doubt. Thus in 421 U.S. at 701, the Supreme Court in Mullaney explained further:

> "It has been suggested, State v. Wilbur, 278 A.2d at 145, that because of the difficulties in negating an argument that the homicide was committed in the heat of passion the burden of proving this fact should rest on the defendant. No doubt this is often a heavy burden for the prosecution to satisfy. The same may be said of the requirement of proof beyond a reasonable doubt of many controverted facts in a criminal trial. But this is the traditional burden which our system of criminal justice deems essential."

We must recall what was said by the Supreme Court of the United States in Holland v. United States, id at 348 U.S. at 129, where they cautioned Courts to remeber that charges should be especially clear, including in addition to the formal instructions, a summary of the nature of the net worth method, etc.

We realize that no net worth method was used here,

but the language of Holland is nevertheless important. The type of proof herein was all circumstantial and in the Holland case the Supreme Court noted that Appellate Courts should be especially careful to review these issues since the Government relies upon circumstantial evidence as to guilt and that such a method is itself only an approximation.

In view of the foregoing, we submit that the case should never have been submitted to a jury at all; that United States v. Taylor, supra, should have resulted in a dismissal of the charges altogether at the close of the Government's case.

CONCLUSION

The judgment of conviction should be reversed and the indictment dismissed.

Respectfully submitted,

IRVING ANOLIK
Attorney for Defendant-Appellant

A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC

NUNITED STATES COURT PF APPEALS
FOR THE SECOND CIRCIIT

UNITED STATES OF AMERICA,
Appellee,

- against -

IRVING BEHRMAN,
Defendant- Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK. COUNTY OF NEW YORK *ss.:*

I. James A. Steele *being duly sworn.*
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
310 West 146th Street, New York, New York
That on the 13th *day of* April *19*76 *at* One St. Andrews Plaza, New York, New York

deponent served the annexed ~~Appendix.~~ Brief *upon*

Robert B. Fiske Jr.,

the Attorney *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein.*

Sworn to before me, this 13th
day of April *19* 76

Robert T. Brin

James A. Steele
JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977